

AMENDED IN SENATE JUNE 29, 2002

AMENDED IN SENATE JUNE 18, 2002

AMENDED IN SENATE MAY 22, 2002

AMENDED IN ASSEMBLY MARCH 20, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1769**

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**Introduced by Assembly Member Leslie**  
**(Coauthors: Assembly Members Aanestad, Harman, La Suer,**  
**Longville, Robert Pacheco, Pescetti, and Salinas)**  
**(Coauthors: Senators Johannessen and Morrow)**

January 9, 2002

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An act to add Section 17538.41 to the Business and Professions Code, relating to advertising.

LEGISLATIVE COUNSEL'S DIGEST

AB 1769, as amended, Leslie. Advertising: unsolicited cellular telephone and pager text messages.

Existing law provides for the regulation of advertising and specifically prohibits a person conducting business in this state from faxing or electronically mailing unsolicited advertising material, unless certain conditions are satisfied. Existing law provides that a violation of the provisions regulating advertising is a misdemeanor, and also provides for imposition of civil penalties and injunctive relief.

This bill would, subject to certain exceptions, generally prohibit a person or entity conducting business in this state from transmitting or causing to be transmitted a text message advertisement to a cellular

telephone or pager equipped with short message or a similar capability, consisting of ~~unsolicited~~ advertising material. By creating a new crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 17538.41 is added to the Business and  
2 Professions Code, to read:  
3 17538.41. (a) (1) Except as provided in subdivision (b), (c),  
4 or (d), no person or entity conducting business in this state shall  
5 transmit or cause to be transmitted a text message advertisement  
6 to a cellular telephone or pager equipped with short message  
7 capability or any similar capability allowing the transmission of  
8 text messages. A text message advertisement is a message, the  
9 principal purpose of which is to promote the sale of goods or  
10 services to the recipient, consisting of ~~unsolicited~~ advertising  
11 material for the lease, sale, rental, gift offer, or other disposition  
12 of any realty, goods, services, or extension of credit.  
13 (2) This section shall apply when a text message advertisement  
14 is transmitted to a telephone number assigned for cellular  
15 telephone or pager service to a California resident.  
16 (b) This section does not apply to text messages transmitted at  
17 the direction of a person or entity offering cellular telephone or  
18 pager service if the subscriber is offered an option to not receive  
19 those text messages.  
20 (c) This section does not apply to text messages transmitted by  
21 a business that has an existing ~~or prior~~ relationship with the  
22 subscriber if the subscriber is offered an option not to receive text  
23 messages from that business.  
24 (d) This section does not apply to text messages transmitted by  
25 an affiliate of a business that has an existing ~~or prior~~ relationship  
26 with the subscriber, but only if the subscriber has provided a



1 consent to the business with which he or she has that relationship  
2 ~~with~~ to receive text messages from affiliates of that business.  
3 ~~‘Affiliate’~~ “*Affiliate*” means any company that controls, is  
4 controlled by, or is under common control with, another company.

5 (e) Subdivision (a) shall not impose an obligation on a person  
6 or entity offering cellular or pager service to control the  
7 transmission of a text message unless the message is transmitted  
8 at the direction of that person or entity.

9 SEC. 2. No reimbursement is required by this act pursuant to  
10 Section 6 of Article XIII B of the California Constitution because  
11 the only costs that may be incurred by a local agency or school  
12 district will be incurred because this act creates a new crime or  
13 infraction, eliminates a crime or infraction, or changes the penalty  
14 for a crime or infraction, within the meaning of Section 17556 of  
15 the Government Code, or changes the definition of a crime within  
16 the meaning of Section 6 of Article XIII B of the California  
17 Constitution.

